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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,232	01/23/2004	Arnd Kessler	H 5332 PCT/US	9405

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HENKEL CORPORATION  
THE TRIAD, SUITE 200  
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GULPH MILLS, PA 19406

EXAMINER
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MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/764,232		KESSLER ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Brian P Mruk		1751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1-23-04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-13 and 20-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Scheper et al, U.S. Patent No. 6,013,613.

Scheper et al, U.S. Patent No. 6,013,613, discloses a low foaming automatic dishwashing composition comprising 5-90% by weight of a builder (see col. 2, lines 51-58), 0.1-15% by weight of a nonionic surfactant, such as block copolymers of polyoxyethylene-polyoxypropylene (see col. 5, line 44-col. 6, line 44), 0.1-70% by weight of a bleaching agent (see col. 10, lines 19-37), 0.001-6% by weight of an

enzyme (see col. 11, line 62-col. 12, line 15), and adjunct ingredients. Specifically, note Examples 1-15. Although Scheper et al is silent with respect to the viscosity of the nonionic surfactants, the examiner asserts that the nonionic surfactants disclosed by Scheper et al would inherently meet the viscosity requirements of the instant claims, absent a showing otherwise, since the nonionic surfactants required in Scheper et al are similar to the preferred nonionic surfactants described on pages 4-5 of applicant's specification. Therefore, instant claims 1-13 and 20-28 are anticipated by Scheper et al, U.S. Patent No. 6,013,613.

4. Claims 1-13 and 20-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Gorlin et al, U.S. Patent No. 5,698,507.

Gorlin et al, U.S. Patent No. 5,698,507, discloses a nonaqueous automatic dishwashing composition comprising 5-15% by weight of citric acid, 1-6% by weight of an ethyleneoxide-propyleneoxide nonionic surfactant, 0.75-3% by weight of hydrogen peroxide, 0.5-6% by weight of amylase and protease enzymes, and adjunct ingredients (see col. 2, line 48-col. 3, line 10). Specifically, note Examples 1A-H. Although Gorlin et al is silent with respect to the viscosity of the nonionic surfactants, the examiner asserts that the nonionic surfactants disclosed by Gorlin et al would inherently meet the viscosity requirements of the instant claims, absent a showing otherwise, since the nonionic surfactants required in Gorlin et al are similar to the preferred nonionic surfactants described on pages 4-5 of applicant's specification. Therefore, instant claims 1-13 and 20-28 are anticipated by Gorlin et al, U.S. Patent No. 5,698,507.

5. Claims 1-13, 20-22 and 26-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Kawaguchi et al, U.S. Patent No. 6,680,286.

Kawaguchi et al, U.S. Patent No. 6,680,286, discloses a detergent composition comprising 1-95% by weight of a nonionic surfactant and 30-70% by weight of a builder (see abstract, col. 18, lines 27-54 and col. 28, lines 30-36). It is further taught by Kawaguchi et al that preferred nonionic surfactants include block copolymers of ethyleneoxide and propyleneoxide, such as EO-PO-EO-PO block copolymers (see col. 9, line 11-col. 10, line 16). Specifically, note Detergent Examples 1-41. Although Kawaguchi et al is silent with respect to the viscosity of the nonionic surfactants, the examiner asserts that the nonionic surfactants disclosed by Kawaguchi et al would inherently meet the viscosity requirements of the instant claims, absent a showing otherwise, since the nonionic surfactants required in Kawaguchi et al are similar to the preferred nonionic surfactants described on pages 4-5 of applicant's specification. Therefore, instant claims 1-13, 20-22 and 26-28 are anticipated by Kawaguchi et al, U.S. Patent No. 6,680,286.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi et al, U.S. Patent No. 6,680,286.

Kawaguchi et al, U.S. Patent No. 6,680,286, is relied upon supra as disclosing a detergent composition comprising 1-95% by weight of a nonionic surfactant and 30-70% by weight of a builder (see abstract, col. 18, lines 27-54 and col. 28, lines 30-36). It is further taught by Kawaguchi et al that preferred nonionic surfactants include block copolymers of ethyleneoxide and propyleneoxide, such as EO-PO-EO-PO block copolymers (see col. 9, line 11-col. 10, line 16). Specifically, note Detergent Examples 1-41. Although Kawaguchi et al is silent with respect to the viscosity of the nonionic surfactants, the examiner asserts that the nonionic surfactants disclosed by Kawaguchi et al would inherently meet the viscosity requirements of the instant claims, absent a showing otherwise, since the nonionic surfactants required in Kawaguchi et al are similar to the preferred nonionic surfactants described on pages 4-5 of applicant's specification. It is further taught by Kawaguchi et al that the composition may further contain bleaching agents (see col. 20, lines 9-21). Although Kawaguchi et al generally discloses a detergent composition containing an EO-PO-EO-PO block copolymer, the reference does not require a detergent composition containing this specific EO-PO-EO-PO block copolymer with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a detergent composition, as taught by Kawaguchi et al, which contained an EO-PO-EO-PO block copolymer, because such detergent

compositions fall within the scope of those taught by Kawaguchi et al. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a detergent composition containing an EO-PO-EO-PO block copolymer is expressly suggested by the Kawaguchi et al disclosure and therefore is an obvious formulation.

### ***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-28 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No. 10/763,086. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and copending Application No. 10/763,086 claim a similar machine dishwashing detergent composition containing one or more builders, one or more surfactants, 0.1-

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50% by weight of a specific nonionic surfactant, enzymes, and bleaching agents (see claims 1-27 of copending Application No. 10/763,086).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1-28 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/763,776. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and copending Application No. 10/763,776 claim a similar machine dishwashing detergent composition containing one or more builders, one or more surfactants, 0.1-50% by weight of a specific nonionic surfactant, enzymes, and bleaching agents (see claims 1-24 of copending Application No. 10/763,776).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

BPM

Brian Mruk  
October 19, 2004

*Brian P. Mruk*

Brian P. Mruk  
Primary Examiner  
Tech Center 1700